

It is a responsibility of the President to nominate. It is a responsibility of the Members of this body to give advice and consent on that nomination. Yet here we are today with the majority of this body saying we do not take seriously our responsibility under the Constitution to give advice and consent.

We have seen the process of really slowing—slow-walking nominations, but this is on a different scale of magnitude.

It is our responsibility to have a committee vet the nominees, our responsibility to have a floor debate on the floor, our responsibility to have a vote, and that certainly is a way the Senate has operated decade after decade, century after century.

I just have to ask each of my colleagues across the aisle, do you find in this beautiful Constitution any phrase that says the President shall nominate but only in the first 3 of the 4 years he or she is in office? Can you find that in the Constitution? Can you truly raise your head and say you are doing your responsibility when you say: I only want to exercise my constitutional responsibility of advice and consent 3 out of every 4 years, and then I will take a year off. I think if you read the Constitution you will find that is not what it says, and the American people know this. They know the Supreme Court is very important to calling the balls and strikes when actions or laws move into areas that are out of bounds. That is what the Supreme Court does. It makes sure our structure of laws and regulations stay within the bounds of the rights and rules of our Constitution.

This is a critical part of the construction of American democracy. The Supreme Court serves as a check on the overreach of the President, the overreach of this body, and the overreach of its regulators. It cannot do its job if it does not have a full set of members.

Not since the Civil War has the Supreme Court been left with a vacancy for more than a year, and of course the Civil War was a very unusual situation. Since the 1980s, every person appointed to the Supreme Court has been given a hearing and a vote within 100 days. Since 1975, on average, it has taken 2 months to confirm Supreme Court nominees.

Despite what some of my colleagues claim, the President's duty to make nominations to the Supreme Court does not disappear during a Presidential election year. Our responsibility to do advice and consent does not disappear in a Presidential year. Let's look to history. More than a dozen Supreme Court Justices have been confirmed in the final year of a Presidency. More recently, Justice Kennedy, who is still on the bench, was confirmed in the last year of President Reagan's final term. That was done by a Senate led by the opposite party. It was a Democratically controlled Senate that honored its responsibility to give advice and consent.

The American people spoke overwhelmingly when they reelected President Obama in 2012 to a 4-year term. They expect him to fulfill his duties for a full 4 years. They expect us to do our duties under the Constitution. The current campaign events do not stop the responsibilities of the U.S. Senate. For the last 200 years, the Senate has carried out its duty to give a fair and timely hearing and a floor vote to the President's Supreme Court nominees. Let us not change that position today, this week or this year. Let's not only honor the tradition, let's honor the constitutional responsibility.

I note it is not only the Supreme Court we have to worry about. Last year the Senate confirmed just 11 Federal judges, the fewest in any year since 1960—in the last 56 years. Only one Court of Appeals judge was confirmed, the lowest in any given year since 1953. The number of judicial emergencies, where there are not enough judges confirmed to do the workload, has nearly tripled over the past year, from 12 in January 2015 to 31 judicial emergencies today.

The obstruction is not limited simply to the judicial branch. The abuse of advice and consent or disregard for the responsibility extends to the executive branch. When we elect a President, the President is not a President of the party, he or she is the President of a nation. Whether you are a Democrat or Republican, the President is our President. Systematically using party politics to undermine the individual because they were elected from the opposite party diminishes the individuals who serve in this body, it diminishes the stature of this institution, and it diminishes the function of our Nation so carefully crafted in our Constitution.

Let's ponder the path forward this year. Let's not diminish this institution by forsaking our responsibility. Let's not politically polarize the Court that is so essential to making sure our laws and regulations and attitudes stay within the bounds of the Constitution. Let's instead restore this institution. Let's restore the Senate. Let it be at least as healthy as it was when we were youngsters serving here as interns, coming to DC for the first time or simply reading about it in a book back home.

Let's restore the effectiveness of our judiciary. When we have judicial emergencies, we have justice delayed, and justice delayed is justice denied, and that does not honor the vision of the role of justice in the United States of America.

So I call on my colleagues to end this obstruction that diminishes your service, diminishes this institution, and damages our Nation. In short, do your jobs. Work together as 100 Senators for the future of our Nation.

Thank you, Mr. President.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. FRANKEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. TOOMEY). Without objection, it is so ordered.

Mr. FRANKEN. Mr. President, I ask unanimous consent to speak for up to 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

FILLING THE SUPREME COURT VACANCY

Mr. FRANKEN. Mr. President, I rise today to address the recent vacancy on the U.S. Supreme Court and to urge my colleagues to grant swift consideration of the President's eventual nominee.

Make no mistake, the passing of Justice Antonin Scalia came as a great shock. Although Justice Scalia and I did not share a common view of the Constitution or of the country, I recognized that he was a man of great conviction and, it should be said, a man of great humor. My thoughts and prayers are with his family, his friends, his clerks, and his colleagues. But we must now devote ourselves to the task of helping to select his successor.

The Constitution—so beloved by Justice Scalia—provides that the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court.”

Let us all remember that each and every Senator serving in this body swore an oath to support and defend that same Constitution. It is our duty to move forward. We must fulfill our constitutional obligation to ensure that the highest Court in the land has a full complement of Justices. Unfortunately, it would seem that some of my colleagues on the other side of the aisle do not agree, and they wasted no time in making known their objections.

Less than an hour after the news of Justice Scalia's death became public, the majority leader announced that the Senate would not take up the business of considering a replacement until after the Presidential elections. “The American people should have a voice in the selection of their next Supreme Court justice,” he said.

The only problem with the majority leader's reasoning is that the American people have spoken. Twice. President Barack Obama was elected and then reelected by a solid majority of the American people, who correctly understood that elections have consequences, not the least of which is that when a vacancy occurs, the President of the United States has the constitutional responsibility to appoint a Justice to the Supreme Court. The Constitution does not set a time limit on the President's ability to fulfill this duty, nor, by my reading, does the Constitution set a date after which the President is no longer able to fulfill his

duties as Commander in Chief or to exercise his authority to, say, grant pardons or make treaties. It merely states that the President shall hold office for a term of 4 years, and by my count, there are in the neighborhood of 11 months left.

If we were truly to subscribe to the majority leader's logic and extend it to the legislative branch, it would yield an absurd result. Senators would become ineffective in the last year of their terms. The 28 Senators who are now in the midst of their reelection campaigns and the 6 Senators who are stepping down should be precluded from casting votes in committee or on the Senate floor. Ten committee chairs and 19 subcommittee chairs should pass the gavel to a colleague who is not currently running for reelection or preparing for retirement. Bill introduction and indeed the cosponsorship of bills should be limited to those Senators who are not yet serving in the sixth year of their terms. If the majority leader sincerely believes the only way to ensure that the voice of the American people is heard is to lop off the last year of an elected official's term, I trust he will make these changes, but I suspect he does not. Rather, it seems to me that the majority leader believes the term of just one elected official in particular should be cut short, which begs the question, just how should it be cut? As I said, by my count, approximately 11 months remains in Barack Obama's Presidency. Now, 11 months is a considerable amount of time. It is sizeable. It has heft, but I wouldn't call it vast.

Then again, there is a certain arbitrariness to settling on 11 months. After all, it is just shy of a full year. Perhaps, in order to simplify matters, an entire year would be proper or maybe just 6 months, half a year. It is a difficult decision. If only the American people had a voice in selecting precisely how much time we should shave off the President's term.

Of course, now that I mention it, there is a way to give the American people a voice in this decision. The majority leader could propose a constitutional amendment. It would, of course, have to pass both Houses of Congress with a two-thirds majority, but that is not an insurmountable obstacle. Provided it clears Congress, the amendment would then bypass the President—which, in this case, would be very apt—and be sent to the States for their ratification. So if the majority leader truly wants the voters to decide how best to proceed, our founding document provides a way forward.

Suggesting that the Senate should refuse to consider a nominee during an election year stands as a cynical affront to our constitutional system, and it misrepresents our history. The Senate has a long tradition of working to confirm Supreme Court Justices in election years. One need look no further than sitting Associate Justice Anthony Kennedy, a Supreme Court

nominee appointed by a Republican President and confirmed by a Democratic Senate in 1988—President Reagan's last year in office—during an election year. So when I hear one of my colleagues say "It's been standard practice over the last 80 years to not confirm Supreme Court nominees during a presidential election year," I know that is not true.

I am not the only one who knows that is not true. The fact-checking publication PolitiFact recently observed that "[s]hould Republican lawmakers refuse to begin the process of confirming a . . . nomination, it would be the first time in modern history." SCOTUSblog, an indisputable authority on all matters related to the Court, confirmed that the "historical record does not reveal any instances [in over a century] of the . . . Senate failing to confirm a nominee in a presidential year because of the impending election."

The fact is that there is a bipartisan tradition—a bipartisan tradition—of giving full and fair consideration to Supreme Court nominees. Since the Judiciary Committee began to hold hearings in 1916, every pending Supreme Court nominee, save nine, has received a hearing. And what happened to those nine nominees? They were confirmed within 11 days of being nominated.

In 2001, during the first administration of President George W. Bush, then-Judiciary Committee Chairman LEAHY and Ranking Member HATCH sent a letter to their Senate colleagues making clear that the committee would continue its longstanding, bipartisan practice of moving pending Supreme Court nominees to the full Senate, even when the nominees were opposed by a majority of the committee, but, regrettably, my colleagues on the other side of the aisle are leaving that long tradition behind.

Yesterday, every Republican member of the Senate Judiciary Committee sent a letter to the majority leader vowing to deny a hearing to the President's eventual nominee. "This committee," they wrote, "will not hold hearings on any Supreme Court nominee until after our next President is sworn in on January 20th, 2017." This marks a historic dereliction of the Senate's duty and a radical departure not just from the committee's past traditions but from its current practices.

I know that my good friend Chairman GRASSLEY cares a great deal about maintaining the legacy of the Judiciary Committee and the propriety of its proceedings. Under his leadership, we have seen the committee put country before party and move consensus, bipartisan proposals. I had hoped Chairman GRASSLEY would approach the task of confirming our next Supreme Court Justice with the same sense of fairness and integrity. I still hope that. But I was very disappointed to learn that yesterday Chairman GRASSLEY gathered only Republican committee members in a private meeting where

they unilaterally decided behind closed doors to refuse consideration of a nominee. The decision to foreclose even holding a hearing for a nominee to our Nation's highest Court is shameful, and I suspect the American people share that view.

The Supreme Court is a central pillar of our democracy. The women and men who sit on that bench make decisions that touch the lives of every single American, regardless of party or political persuasion. Now the Senate must do the same. We must honor our solemn duty to uphold the Constitution and to ensure that Americans seeking justice are able to have their day in court before a full bench of nine Justices.

I urge my colleagues to reject the impulse to put politics before our sworn duty to uphold the Constitution.

I thank the Presiding Officer and yield the floor to my colleague from Utah.

The PRESIDING OFFICER (Mr. GARDNER). The Senator from Utah.

Mr. LEE. Mr. President, Supreme Court Justice Antonin Scalia was an extraordinary man whose contributions to this country and the American people, whom he faithfully served from the bench, are so prodigious that it will take generations for us to fully comprehend our debt of great gratitude to him. His untimely, recent death is a tragedy, and his legacy is a blessing to friends of freedom throughout this country and everywhere.

Justice Scalia was a learned student of history and a man who relished, perhaps more than any other, a spirited, lively debate, so it is fitting that his passing has sparked a conversation in America, a spirited conversation about the constitutional powers governing the appointment of Supreme Court Justices and the historical record of Supreme Court vacancies that happen to open up during a Presidential election year.

This debate gives the American people and their elected representatives in the Senate a unique opportunity to discuss our Nation's founding charter and history at a time when our collective choices have very real consequences, so it is important that this debate proceed with candor, mutual respect, and deference to the facts. In that spirit, I wish to address and correct a few of the most pernicious errors, inaccuracies, fallacies, and fabrications we have heard from some of the loudest voices in this debate over the last few days.

From the outset, I have maintained that the Senate should withhold its consent of a Supreme Court nomination to fulfill Justice Scalia's seat and wait to hold any hearings on a Supreme Court nominee until the next President, whether it is a Republican or a Democrat, is elected and sworn in. This position is shared by all of my Republican colleagues on the Senate Judiciary Committee, consistent with the Senate's powers in the appointment of Federal judges and supported by historical precedent.

In response, some of my colleagues on the other side of the aisle and many in the media have resorted to all manner of counterarguments, ranging from the historically and constitutionally inaccurate to the absurd, and in many cases, the claims made by some of my colleagues today flatly contradict their own statements from the past.

I believe the plain meaning of the Constitution and the historical record are sufficiently clear to stand on their own as evidence that there is absolutely nothing unprecedented and absolutely nothing improper about the Senate choosing to withhold its consent of a President's nominee to the Supreme Court, so I would like to focus on one particular allegation offered by some of my colleagues on the other side of the aisle.

With the letter and the spirit of the Constitution, as well as their own words standing against them, many have turned to fearmongering in a last-ditch effort to win the debate. They claim that leaving Justice Scalia's seat vacant until the next President nominates a replacement would somehow inflict a profound institutional injury on the Supreme Court by disrupting the resolution of this term's cases before the Court, a term including important cases on abortion, immigration, religious liberty, and mandatory union dues, among others, ensnaring the Court in endless gridlock with an evenly split eight Justices on the bench and leaving it short-staffed for an unprecedented and potentially prolonged period. Here, the doomsayers are on weak ground, indeed. Let's look at each of these claims in turn.

First, is it true—as many have claimed—that the business of the Supreme Court will be obstructed or otherwise disrupted if the Senate withholds its consent of President Obama's nominee? Absolutely not.

In recent history—in fact, since the nomination of Justice Scalia to the Supreme Court in 1986—it has taken more than 70 days on average for the Senate to confirm or reject a nominee after that nominee has been formally submitted by the President to the Senate for its advice and consent—more than 70 days on average. In many cases, it has taken far longer for the Senate to grant or withhold its consent. It took this body 108 days to reject Judge Robert Bork and 99 days to confirm Justice Clarence Thomas.

Presuming the modern historic average would hold true for any future nominee, even if President Obama were to announce and refer a nominee to the Senate today for our advice and consent, the process would carry through until at least early May. But, significantly, the Supreme Court stops hearing cases in April, which means that even if President Obama were to announce a nominee today, right now, and even if the Senate were to confirm that nominee in a period of time consistent with historical standards, that individual would not be seated in time

to hear and rule upon any of the cases that are currently on the Court's docket or any of the cases that are before the Court in this term. In other words, it would be historically anomalous for any of the cases currently pending before the Court to be decided this term by a nine-member Supreme Court no matter what the Senate chooses to do regarding any future nominee.

Let's put this in perspective. In this scenario—a scenario endorsed by Senate Democrats—it is highly unlikely that the nominee to fill Justice Scalia's seat would hear oral arguments until the beginning of October, literally just a few weeks before the Presidential election. This proves that the main argument made by President Obama and his allies is based on a myth. In their telling, the Senate's choice to withhold consent of a nominee would deny President Obama a Supreme Court Justice who will serve during his final year in the White House, but in reality, it is unlikely that the President's nominee will join the Supreme Court until the country is just weeks away from choosing President Obama's replacement. I think most Americans recognize the problem of a President having the ability to reshape the Supreme Court in his image on his way out of office, and that is exactly why the Senate is choosing to withhold its consent in this case. This is the right course not because of anything the Senate does or does not do and not because of anything the President does or does not do, it is simply a function of the unfortunate timing of Justice Scalia's death. Claims to the contrary are flatly contradicted by an empirical analysis of the Court's history.

Second, the Senate's decision to withhold consent will not lead to an intractable impasse or hopeless gridlock, even if the eventual appointee were to miss the entirety of the next term, which starts in October of 2016 and runs until the end of June 2017.

In each of its previous 5 terms, the current Court has decided only 16 cases on average—or 23 percent of its caseload—by a 5-to-4 majority, and Justice Scalia was 1 of the 5 Justices in the majority in those 5-to-4 cases only about half of the time on average. That means that the vacancy left by Justice Scalia would result in about eight cases out of dozens being decided by a 4-to-4 split. In fact, in the last term served by Justice Scalia, the last complete term, he was in the majority in only six of those 5-to-4 cases, and in the year before that, the preceding term, Justice Scalia's second to last term, he was in the majority in only five of the cases decided by a 5-to-4 majority. What does this mean? Well, it means that it is likely that the effect of his absence on the final vote and ultimate disposition of cases will be lower than even the average suggests. Instead of eight cases being decided by a 4-to-4 split in Justice Scalia's absence, it is likely to be closer to five or

six, as it has been in the last two full terms of Justice Scalia's service on the Court.

Let's not forget what should be obvious: The sky does not fall when a 4-to-4 split occurs on the Supreme Court; rather, the decision of the lower court is left standing. And if there is the prospect of a 4-to-4 split on a particularly salient matter, the Court always has the option of scheduling or rescheduling the hearing for a later time when the Court will have all nine Justices presiding and hearing the case.

Finally, a vacancy on the Court lasting through the Presidential election season will have no greater effect on the Court's ability to decide cases than any number of instances in the past where the Court has had to decide matters with eight Justices or even fewer.

As recently as the Court's 2010-to-2011 term, the Court had to decide over 30 cases with eight or fewer Justices, almost entirely as a result of recusals arising from Justice Kagan's nomination.

Likewise, following the retirement of Justice Powell in 1987, the Court had to act on 80 cases with 8 or fewer justices. This was a result of Democratic opposition to Judge Bork and the eventual late-February confirmation of Anthony Kennedy, coupled with dozens of recusals by Kennedy and other Justices later in that term.

In the October term of 1945, the Court functioned as an eight-member body while Justice Robert Jackson was serving as a prosecutor in Nuremberg, acting on a full term's caseload without him. Tellingly, when Justice Jackson expressed concern about missing so many cases and actually considered returning early for that reason, Justice Felix Frankfurter wrote to encourage Justice Jackson to stay on as a prosecutor, stating that his absence was not “sacrificing a single interest of importance.” Compared to today, the Court had a larger workload and issued many more opinions during that term in which Justice Jackson was absent. This suggests that a vacancy of a similar duration as Jackson's full-term sabbatical would be even less damaging to the Court's functioning than the absence of Justice Jackson—an absence that, to reiterate, did not sacrifice “a single interest of importance.”

The next President's future nominee is unlikely to miss as many cases as Justices Kennedy or Jackson missed.

These are the facts, Mr. President. They can't be ignored nor can they be wished away. If we are going to have a serious, honest debate about the vacancy left by Justice Scalia's tragic passing, we must proceed on the basis of these facts.

Thank you, Mr. President.

I yield the floor.

THE PRESIDING OFFICER. The Senator from New Hampshire.

Mrs. SHAHEEN. Mr. President, since the beginning of our Nation, the U.S. Senate has maintained an important bipartisan tradition of giving fair consideration to Supreme Court nominees.

Article II, section 2 of the Constitution is unambiguous about the respective duties and responsibilities of the President and the Senate when there is a Supreme Court vacancy. The Founders did not intend these roles to be optional or something to be disregarded. Article II also states that the President shall hold his office during the term of 4 years, not 3 years or 3 years and 1 month, but 4 full years.

The Constitution plainly says that it is the President's duty to nominate a Supreme Court Justice and it is the Senate's duty to provide advice and consent on that nomination. Throughout our history, Senators have done their constitutional duty by considering and confirming Supreme Court Justices in the final year of a Presidency. In fact, the Senate has done that 14 times, most recently in 1988, when the Senate confirmed Justice Anthony Kennedy, who was President Reagan's nominee to the Supreme Court. He sent that nomination over to the Democratic majority in this body. Almost 28 years ago exactly to the day in February of 1988, the Democratic majority in the Senate confirmed Republican President Ronald Reagan's judicial nomination, Anthony Kennedy, unanimously 97-0. They didn't debate whether it was a Presidential year and whether they could act. It was in the middle of a hard-fought election. It was not at all clear what the outcome of that election was going to be.

Since 1975, the average length of time from nomination to a confirmation vote for the Supreme Court—that is the average length of time; sometimes it has taken longer and sometimes it has been shorter—but since 1975, the average length of time has been 67 days because our predecessors in the Senate recognized how important it is for the Supreme Court to be fully functioning.

Unfortunately, this week we are seeing this bipartisan tradition regarding the Court being put at risk. Yesterday we heard the majority leader say that if the President nominates a person to the Supreme Court—any person, no matter how superbly qualified—there will be no hearings and no vote. We even heard some Senators say they would refuse to meet with any potential nominee. I think that is very unfortunate.

It is unfortunate for a number of reasons, probably first and foremost because the people of the United States expect us to work together here in Washington to do the job of the country—to do the jobs we were elected to do—and because the current President's term ends in January of 2017. That is more than 300 days from now. During that time, the Supreme Court will hear many important cases, but if the majority in the Senate has their way, the Court will do so without a full roster of Justices.

As Brianne Gorod of the Constitution Accountability Center has said, and I quote:

The consequences of the Supreme Court being without all nine justices

for so long can hardly be overstated. Most significant, a long-standing vacancy would compromise the Court's ability to perform one of its most important functions, that is, establishing a uniform rule of law for the entire country.

Every Senator here has sworn to support and defend the Constitution—full stop. That is the oath we have taken. Our oath doesn't say to uphold the Constitution most of the time or only when it is not a Presidential election year or only when it is convenient for us or only when we like the ideology that is being presented to us. Our oath says to uphold and defend the Constitution every day, no matter what the issue is that comes before us. The American people expect us as Senators to be faithful to our oath. They also expect us to do our jobs regardless of whether it is a Presidential election year.

I believe we should respect our oath of office. I believe we should do the job we were sent here to do by the American people. I believe we should follow the Constitution. As former Justice Sandra Day O'Connor said last week, and I quote again, "I think we need somebody [on the Supreme Court] now to do the job, and let's get on with it."

I say, let's get on with it.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CARDIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CARDIN. Mr. President, I join the Nation in offering my heartfelt condolences to the family and friends of Justice Scalia, who was an Associate Justice of the U.S. Supreme Court. For more than three decades, Justice Scalia devoted himself to the rule of law and public service at the highest levels. Whether you agreed or disagreed with his decisions, there is no debate about Justice Scalia's profound impact on the Supreme Court. He served his country with great honor.

I was privileged to serve as a member of the Judiciary Committee when I first joined the Senate. I participated in confirmation hearings for judicial nominees for both President Bush and President Obama, including the hearings for Justices Sonia Sotomayor and Elena Kagan.

The Constitution spells out quite clearly what happens when a vacancy occurs on the Supreme Court. Article II, section 2, of the Constitution states that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court."

The American people twice elected President Obama to 4-year terms in office. Their voices have been heard very

clearly. Elections have consequences, and President Obama must carry out the constitutional responsibilities and duties of his office by nominating a successor for Justice Scalia. The President is simply doing the job that the American people elected him to do. The President doesn't stop working simply because it is an election year. He has more than 300 days left in office, as do the Senators who will face the voters this November. Congress should not stop working, either, in this election year and should earn their full paycheck.

So my message is clear. Do your job. It is our responsibility to take up the nominations the President will submit to us. And I think the American people will ultimately demand that the Senate do its job and not threaten to stop working simply to coddle and pander to the most extreme fringe elements of its base, as was done when the government shut down a few years ago with the flirtation of a default on the full faith and credit of the U.S. Government.

Just as the President is carrying out his constitutional duties, so should the Senate. My colleagues in the Senate took an oath to support the Constitution. It is only February, leaving the Senate plenty of time before the elections to consider a nomination that President Obama will make in the coming weeks.

I find it disgraceful that my Republican colleagues would try to obstruct the nomination before the nominee has even been named. Our job as Senators is to examine the qualifications of the nominee for the position. The Senate should get to work once President Obama makes his nomination, in a process that usually takes around two months.

If you look over the history of nominations that have been made by a President on Supreme Court nominees in the amount of time the Senate has considered those nominations, the average is 2 to 3 months. Let me remind you, we have almost a year left in this term of Congress. There is plenty of time. The Senate Judiciary Committee has historically reported nominees to the floor even if the nominee did not garner a majority vote in the committee. And then let the Senate work its will to either confirm or reject the President's nominee.

The tradition of the Senate is to allow each Senator to vote yea or nay on a nomination to the Supreme Court of the United States. That has been the tradition of the Senate. Of course, every Senator has the right to vote no. Senators were elected for 6-year terms by the citizens of their State and have the right and obligation to vote. President Obama was elected by the people of the United States for a 4-year term and has the right and obligation to nominate.

History has shown that when the roles were reversed and the Democrats held the majority in the Senate, Supreme Court and judicial nominees for

Republican Presidents were given hearings and up-and-down votes regardless of when the vacancy occurred. Justice Kennedy was confirmed to the Supreme Court in the last year of President Ronald Reagan's final term in 1988. Other examples of Presidential election-year confirmations include Justice Murphy in 1940, Justice Cardozo in 1932, and Justice Brandeis in 1916. And the Democratic-controlled Senate confirmed numerous judicial nominees of President George W. Bush throughout his final year in office, including nearly a dozen judges in September 2008, just weeks before the election of President Obama.

While I might have picked different judges as a Senator, I voted to confirm the vast majority of President Bush's judicial nominations in his final year in office. I will continue to carry out my constitutional responsibilities that I undertook when I became Senator and swore to support the Constitution. In my view, Justice Scalia would expect nothing less than for the President and the Congress to follow the letter and spirit of the Constitution, our Nation's most fundamental legal document. Justice Scalia wrote a 2004 opinion about the importance of having all nine Justices on the Supreme Court. He stated that without a full complement of Justices, the Court—I am quoting from Justice Scalia—“will find itself unable to resolve the significant legal issues” in pending cases and that a vacancy “impairs the functioning of the Court.”

Justice Scalia understood the importance to have nine Supreme Court Justices. Are we really going to allow there to be a vacancy for that ninth seat for a year?

Former Justice Rehnquist, when he was an Associate Justice of the Supreme Court in 1972, wrote that the prospect of affirming lower court judgments by an equally divided court was “undesirable” because “the principle of law presented by [each] case is left unsettled.” When there is a circuit split, Justice Rehnquist continued, “the prospect of affirmation by an equally divided Court, unsatisfactory enough in a single case, presents even more serious problems where companion cases reaching opposite results are heard together here. . . . [A]ffirmance of each of such conflicting results by an equally divided Court would lay down ‘one rule in Athens, and another rule in Rome’ with a vengeance.”

What Justice Rehnquist was saying is when we have different appellate court decisions—one circuit ruling one way and another circuit ruling another way—they come to the Supreme Court, we have conflicting interpretations, and we have the Supreme Court of the United States to resolve that difference.

What happens if there is a 4-to-4 vote? We have different rules in the Fourth Circuit than in the Third Circuit. That is why we have a Supreme Court. And for a year-plus we are going

to say we are not going to allow the full complement to be there?

I am also privileged to serve as the ranking member of the Senate Committee on Foreign Relations and the ranking member and former chair of the Helsinki Commission. I must tell my colleagues, as I meet with heads of foreign governments, parliamentarians and judges overseas, I feel great pride in that America has created independent judges where a neutral factfinder decides the case based on the law and the facts and cannot be fired for making a decision that offends the government or the politically powerful. I really do believe the Supreme Court and Federal judiciary are some of the crown jewels of our American system of government and the envy of the world. That is why I am so disgusted and disappointed today with the majority's attempt to abdicate their responsibilities as Senators and as Americans by not doing their job and simply obstructing the operation of good governance for partisan political purposes. I say that because the Republican members of the Judiciary Committee have written a letter saying they are not even going to take up this nomination. There will not even be any hearings.

Do your job. Our job is to consider a nomination that is submitted by the President.

What the Republicans are effectively trying to do is to temporarily shrink the Supreme Court from nine to eight Justices and shorten the term of the President from 4 years to 3 years. That is not in the Constitution. This is disgraceful and indefensible. Frankly, it reminds me of the arguments Republicans used in 2013 when they accused President Obama of trying to pack the court when they announced they would not support further nominees to the U.S. Court of Appeals for the District of Columbia Circuit. No, President Obama was not trying to pack the court by changing the number of seats on the court. He was merely nominating individuals to existing vacancies on the court that were authorized by Congress by an enacted statute. That is the President's responsibility.

Let me remind my colleagues that Congress has the authority to pass a statute that is signed into law by the President or by overriding his veto. What Congress cannot and the Senate should not do is purport to shrink the size of the court, be it the Supreme Court or district court or circuit court, by simply refusing to even consider a nominee until the next President takes office.

If this decision by the Republicans is allowed to stand, it would create an artificial vacancy for over a full year, spanning two terms of the Court, which would be unprecedented since the Civil War. We recall that after the last century, Supreme Court nominees have received timely hearings and considerations by the Senate Judiciary Committee and the full Senate.

It matters if the Supreme Court is not fully operational and gridlocks in

4-to-4 ties. Under that scenario, the division of the lower court stands, even when there is a split among the circuits where only the Supreme Court could and should clarify the law. This will lead to more uncertainty, litigation, wasted time and resources, and ultimately delay and deny justice for the American people.

It would be a great tragedy—and potentially do long-term damage to the Supreme Court and the independent judiciary—if the Republican strategy of delay and obstruction prevails. I urge my colleagues: Do your job. Do your job. When the President submits the nomination for the Supreme Court vacancy created by the death of Justice Scalia, schedule a timely hearing and establish a reasonable schedule for the Senate and each of its 100 Members to vote yea or nay on the person the President submits as a nominee for the Supreme Court. That is our responsibility. We need to do our job.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. MARKEY. Mr. President, former Chief Justice Warren Burger once explained the historical significance of the U.S. Constitution as follows. He wrote that “in the last quarter of the 18th century, no nation in the world was governed with separated and divided powers providing checks and balances on the exercise of authority by those who governed.”

The Chief Justice went on to call the Constitution “a remarkable document—the first of its kind in all of human history.”

Chief Justice Burger was right. The Constitution is remarkable, and it is remarkable not only for what it says but how it says it.

In some places the Constitution speaks in poetry, like the Preamble that begins with “We the People of the United States,” and talks of “a more perfect Union” and “the Blessings of Liberty.”

In other places, the Constitution is simple prose, but given the importance of every single word in the text of the Constitution, the Founding Fathers wrote in plain, concise, and understandable language.

That clarity can be found in the advice and consent clause of article II, section 2. Its words could not be clearer. It simply states that the President of the United States “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, and Judges of the supreme Court.”

There is no ambiguity there. It is not an invitation to reinterpretation. The President's obligation under the Constitution is crystal clear. He shall nominate someone to fill a vacancy on the Supreme Court.

President Obama has stated that he will fulfill his obligation and send the Senate an eminently qualified nominee to fill the vacancy created by the unfortunate passing of Justice Antonin Scalia.

When President Obama does that, it will be the Senate's turn to fulfill its obligation under the Constitution.

The text of the Constitution on the Senate's responsibility is similarly clear. The Senate is to provide its advice and consent. Let me repeat that. The Senate is to provide its advice and consent.

Advice and consent does not mean the Senate disregards the Constitution and ignores a nomination to the Supreme Court. It is advice and consent, not avoid and contempt.

The advice and consent clause is not the constitutional equivalent of Roger Maris's home run statistics. There is no asterisk in the Constitution that directs readers to small print that says "except in an election year." There is no fine print in the Constitution that says the Senate is to give its advice and consent except in the last year of a President's term.

Despite the clear constitutional instruction on how the executive and legislative branches are to handle a vacancy on the Supreme Court, the Republicans on the Judiciary Committee yesterday unilaterally decided they would not hold a hearing on a Supreme Court nominee to fill Justice Scalia's seat until after the upcoming Presidential election. This partisan decision to obstruct is a drastic departure from long-established practice and procedure in filling Supreme Court vacancies. The Senate has routinely confirmed Supreme Court Justices in the final year of a Presidency. In fact, it has happened more than a dozen times, most recently with the confirmation of Justice Anthony Kennedy during the last year of Ronald Reagan's second term as President. In the last 100 years, the Senate has taken action on every Supreme Court nominee regardless of whether the nomination was made in a Presidential election year.

So the American people now have to deal with two vacancies: one on the Supreme Court and the other in the judgment of Senate Republicans because they seem willing to go to unprecedented lengths to stop this constitutionally mandated process from moving forward.

Republican Senators' reading words into the Constitution to reach the result they want is no different from the so-called judicial activism on the bench they routinely decry.

The Republicans would rather shirk their constitutional responsibility than let President Obama appoint another Justice to the Court. They would rather deprive the country of a fully functioning Supreme Court than fulfill their constitutional duty, not just for the remainder of this term but for the next term of the Supreme Court as well.

Now, why is that? Well, because a Justice of the Supreme Court has only one vote, but a single seat on the Court and a single vote that comes with it can carry enormous significance. We need only look at this divided Supreme

Court's recent 5-to-4 decisions to understand why Republicans prefer a vacancy on the Supreme Court. With only eight justices instead of nine, the Court's decisions can deadlock with a 4-to-4 vote. A tie vote leaves in place the lower court decision that has been appealed to the Supreme Court. A 4-to-4 deadlock can have far-reaching consequences.

Take *Bush v. Gore*, the 2000 decision that stopped Florida's vote recount in the 2000 Presidential election. *Bush v. Gore* was decided by a 5-to-4 vote. If a seat on the Supreme Court had been vacated, resulting in a 4-to-4 vote, then the outcome of that election could have been different.

So that is pretty much the consequence here. It is going to have, without question, some impact on how these decisions are going to be made, but it is without any full comprehension of what that change could be, only because nine human beings are involved, but there is a responsibility that we have in the Senate to ensure that we, in fact, have a full Supreme Court.

The President shall nominate. That is without question the duty he has. We shall provide advice and consent. That is our duty. We don't have to give consent at the end of the day. We can have a vote on the Senate floor to determine whether someone is, in fact, going to be confirmed, but we have that constitutional responsibility.

There is still ample time for the President to submit a nomination, for the Judiciary Committee to hold hearings on it, and for the full Senate to vote on it.

The U.S. Constitution remains a remarkable document. Let us treasure it, not twist it. Let us respect it, not run from it. Let us fulfill our constitutional obligations and have a hearing on the President's nominee and a vote by the Senate. In other words, to the U.S. Senate: Do your job. It is in the Constitution. There is no way you can run from a clear interpretation of what the Constitution requires us to do once the President has nominated a new candidate for the Supreme Court. There are direct instructions for the President in the Constitution and there are direct instructions for us in the Senate.

Let us hope that after the President nominates a candidate, that this body deliberates, listens to all the testimony, and then has a vote on whether that person is qualified to serve on the Supreme Court, but the only way that is going to happen is if this body does its job. So we ask the Members of the majority to ensure that happens.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. BLUMENTHAL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. LEE). Without objection, it is so ordered.

Mr. BLUMENTHAL. Mr. President, I am here today to urge this body to fulfill its constitutional duty and take action on the Supreme Court nominee who shortly will be submitted by President Obama. I come here not only as a U.S. Senator but also as a former Federal prosecutor, a U.S. attorney in Connecticut from 1977 to 1981, a former State attorney general for 20 years, and a veteran of four arguments before the U.S. Supreme Court. I am also here as a former law clerk to Justice Harry Blackmun, and I share with the Presiding Officer the experience of having had that supremely important and formative experience, and, of course, it shapes my view as well of the Court.

I have immense respect and awe for the position and power and eminence of the U.S. Supreme Court, its role in our democracy, and its history of scholarship and public service. I have the same admiration for Justice Antonin Scalia, and I take this moment to remember his uniquely American life.

As the son of an immigrant, he was a dedicated public servant, a gifted writer, and a powerful speaker. I heard him speak on a number of occasions and argued before him in the Court in a number of memorable exchanges. His sense of humor and his quickness of wit and insight remain with me now. As all of my colleagues will attest, he dedicated his life to serving the public, which can be demanding and difficult at times, but his life showed, as we know, that the difficulties and the demands are well worth the rewards. My thoughts are with his wife Maureen and his entire family.

My personal view, speaking only for myself, is that one way to honor Justice Scalia is to adhere to the Constitution, to follow its words, which are very explicit on the topic of nominating and confirming a Supreme Court Justice and which give us the role of advising and consenting after the President has nominated. I hope we will fulfill our constitutional duty to advise and consent—to do our job, literally, to do our job as we were elected and took an oath of office to do. That is what we are paid to do—our job as prescribed by the Constitution. I fundamentally reject the notion that the Senate's refusal to act, as laid out in no uncertain terms by my Republican colleagues, fulfills this obligation. In fact, the abdication of responsibility through this rejection is disrespectful to that document and to the Court itself.

President Obama has indicated that he is currently engaged in a thoughtful and deliberative process, working to select a nominee with the intellect and integrity that will persuade the American public and hopefully also the Senate to support his suggestion. His nomination would allow the Supreme Court to function again with the nine members who are essential to its deliberation.

The conclusions my colleagues advance during such a process will, of course, be to each of them to decide. I will be, in fact, among the most exacting and demanding of our colleagues who question that nominee in a hearing, who seek answers in screening and researching the expertise and experience of that person. In no way should the Judiciary Committee, on which I serve, or the U.S. Senate, where we all serve, act as a rubberstamp. No way. No rubberstamp. We must advise as well as consent, and advising means being demanding and careful. But I think we have an obligation to go through that process. We can't just say, sight unseen, no. We can't say that we are going to leave it to the next elected Senate or the next elected President. We have been elected and he has been elected to do our job.

The Supreme Court must have a full complement of Justices to effectively address some of the most complex issues and consequential legal challenges our Nation faces today. Put aside the merits of each—whether it is immigration or affirmative action, women's reproductive rights, voting rights—decisions are needed. The lack of decision has consequences, just as elections have consequences.

Obstruction has consequences, too, and we cannot afford to weaken the Federal judiciary's capacity for effective governance. We can't allow a manufactured crisis in the Senate to plunge another branch of government into gridlock and to plague the judiciary with the same partisan paralysis that is so detested by the American people. In fact, the rejection of our constitutional responsibility to do our job would epitomize the gridlock and partisan contention that America finds so abhorrent today. Like my colleagues, I go around the State of Connecticut, and what people say to me more commonly than anything else is "Why can't you do your job? Why can't you get stuff done?" Let's get this done.

Statements by Majority Leader MCCONNELL and Chairman GRASSLEY, as well as a number of my other colleagues, have indicated that President Obama's nominee to the highest Court in the land should not even be considered, but turning our backs on that constitutional obligation to act would be equivalent to shutting down the government. It is of exactly the same kind of consequence. It may not be as far-reaching in its immediate effect, but it has the same long-term consequences, which are not merely to prevent decisions and actions from happening—necessary decisions and actions—but also to undermine credibility and faith and trust in our government.

When it comes to the Congress or the President, maybe that credibility is of lesser importance, but it is a chief asset of our judiciary. The Supreme Court of the United States has no armies or police force. It commands the Nation's respect through its credi-

bility. It enforces obedience by virtue of that credibility.

This posture by my Republican colleagues threatens to drag a vital, non-partisan institution into the morass of procedural gamesmanship and electoral mudslinging—the kind of game playing and gamesmanship that has so disillusioned and dismayed Americans more broadly.

As I have discussed this process with the people of Connecticut, I have heard outrage over this attempt to hamstring the Supreme Court, which looks like the recent, similarly illogical process of shutting down the government.

If my Republican colleagues want to reject a nominee, that is their right. After a hearing, they can vote no. They may have reason, and those reasons may be subjective or fact-based and objective. But to simply deny any consideration—even a meeting with a nominee—is stark obstructionism. It is an extreme version of the phenomenon that has frozen this body for much too long.

The majority campaigned in 2014 on restoring law and getting things done. They promised Americans everywhere that the new Senate majority would usher in an end to gridlock on Capitol Hill. We made some progress—too slow, too little—but moving in the right direction will be forestalled, if not doomed, by this obstructionism, and these promises would be broken if the Senate refuses to act.

At this critical time, we cannot hold the highest level of an entire branch of government hostage because of political gamesmanship. That is not what the American people elected us to do, and it is not what the American people deserve. Doing so would dishonor the bipartisan tradition of providing a hearing and a vote for a Supreme Court nominee, which is our constitutional obligation and has been followed by past Senates.

Even when a nominee during President Reagan's Presidency was nominated 14 months before the election and even though the vote came during the last year of that President's term in office, Justice Kennedy was confirmed. We should do the same. Why not? There is plenty of time between now and then to give deliberate due consideration to the President's nominee.

I hope that the outrage and outcry from the American people will persuade my colleagues to reconsider, reflect, and reverse this disastrous course. In fact, I believe they will relent because this course is dangerous to the Court, damaging to our Nation, and ultimately destructive to our democracy.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent to speak for up to 20 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WHITEHOUSE. Mr. President, we are here on this conflict we have over a Supreme Court nominee, which has turned into a considerable, unprecedented fuss, I believe, for a fairly simple reason. The elephant, so to speak, in the room is that the Court has become a political actor under Chief Justice Roberts. The rightwing bloc on the Court delivered politically because it had a 5-to-4 majority. Now their rightwing majority is gone, and Republicans are predictably upset.

Justice Frankfurter admonished:

But it is not the business of this Court to pronounce policy. It must observe a fastidious regard for limitations on its own power, and this precludes the Court's giving effect to its own notions of what is wise or politic.

Well, that was then. The five-judge bloc on the Roberts Court, of which Justice Scalia was an essential part, systematically and predictably pronounced policy in favor of three things: No. 1, conservative ideology; No. 2, the welfare of big corporations; and No. 3, the electoral well-being of the Republican Party. And people noticed. Linda Greenhouse wrote that it is "impossible to avoid the conclusion that the Republican-appointed majority is committed to harnessing the Supreme Court to an ideological agenda." Other noted Court watchers, such as Norm Ornstein and Jeffrey Toobin, agree. As Jeffrey Toobin noted, the pattern of decisions "has served the interests, and reflected the values, of the contemporary Republican party." Columnist Dana Milbank observed of a recent decision that "the Roberts Court has found yet another way to stack the deck in favor of the rich." The Court has become so political that Justices Scalia and Thomas have attended the Koch brothers' secretive annual political conference. Just this week, Ms. Greenhouse wrote, "[T]he conservative majority is permitting the court to become an agent of partisan warfare to an extent that threatens real damage to the institution."

It is not just the Court watchers who have noticed; less than one-third of Americans have confidence in the Supreme Court. Americans massively oppose its Citizens United decision—80 percent against, with 71 percent strongly opposed. Most tellingly, by a ratio of 9 to 1, Americans now believe the Court treats corporations more favorably than individuals. Even conservative Republicans agree, by a 4-to-1 margin, that this Court treats corporations more favorably than individuals.

Let's take a look at the Court's decisions in these three areas: election politics, corporate interests, and the conservative social agenda.

In elections decisions, the Court's Republican-appointed majority always seems to come down on the side that helps the election prospects of the Republican Party.

The Voting Rights Act, for example, protects minority access to the ballot,

and in States that had long histories of discriminating against minority voters, it required preclearance of voting restrictions. In the 5-to-4 Shelby County decision, the Republican-appointed Justices gutted that preclearance requirement. Predictably, the result was almost immediate enactment across many States of voter-suppression laws. The Washington Post described, for instance, the “surgical precision with which North Carolina Republicans approved certain forms of photo IDs for voting and excluded others.” Texas, for another instance, allowed gun permits for voting but not State university IDs. And even where these voter-suppression laws ultimately fail in court, Republicans still gain the benefit of fewer Democrats in the electorate while they are litigated.

The conservative judges’ decisions on gerrymandering are a second example. “Gerrymandering” is named after Massachusetts Governor Elbridge Gerry and his efforts to shape the district of a State senator he needed to protect. A clever modern variant of gerrymandering has emerged—bulk gerrymandering—which looks at the whole congressional delegation of a State. This tactic isolates Democrats into small, supersaturated Democratic districts so that majority-Republican districts can be created out of the remainder of the State.

By manipulating the districts this way through its so-called REDMAP project, Republicans delivered congressional delegations that didn’t reflect the State’s popular vote, over and over. For instance, when Pennsylvania voters went to the polls in 2012, Democratic votes for Congress outnumbered Republican votes by a little over 80,000. Pennsylvania also reelected President Obama that year and our colleague, Democratic Senator BOB CASEY. But Pennsylvania at that ballot sent a House delegation to Congress of 5 Democrats and 13 Republicans—more votes for Democrats, more Republicans in the delegation by 13 to 5.

This was not just a Pennsylvania fluke. In 2012, Ohio voted for Barack Obama for President and returned our Democratic colleague SHERROD BROWN to the Senate but sent 12 Republicans to Congress and only 4 Democrats. Wisconsin voted for Obama in 2012 and elected progressive Senator TAMMY BALDWIN to the Senate but sent five Republicans and only three Democrats to Congress.

The Republican organization behind REDMAP bragged of this achievement. I will quote REDMAP’s memo:

[A]ggregated numbers show voters pulled the lever for Republicans only 49 percent of the time in congressional races, [but] Republicans enjoy a 33-seat margin in the U.S. House seated yesterday in the 113th Congress, having endured Democratic successes atop the ticket and over one million more votes cast for Democratic House candidates than Republicans.

This gerrymandering ran wild because in a Supreme Court case called

Vieth v. Jubelirer, four Republican Justices announced that they would no longer question whether gerrymandering interfered with any constitutional voting rights. One, Justice Kennedy, left a glimmer of light, but the practical effect was to announce open season for gerrymandering. As the American Bar Association’s publication on redistricting has noted, “The Court’s recent decisions appear to give legislators leeway to preserve partisan advantage as zealously as they like when drawing district lines.” In practice, gerrymandering of Congress squarely benefited Republicans.

A third example is campaign finance decisions, the most noticeable being *Citizens United*, but a constellation of decisions surrounds *Citizens United*, beginning with Justice Powell’s 1978 opinion in *First National Bank of Boston v. Bellotti*. The careful work of Republican appointees on the Court over many years to open American politics to corporate spending has conferred obvious political advantage to the Republican Party, and, as many news outlets reported, it was Republicans who cheered the *Citizens United* decision.

So, in elections, it is three for three in favor of the Republican Party.

Turning from elections to the conservative agenda on social issues, such as religion and abortion and gun control, let’s start with the *District of Columbia v. Heller* decision, a Second Amendment decision in which this same five-man bloc created, for the first time in our history, an individual right to keep firearms for self-defense. As recently as 1991, this doctrine was such a fringe theory that it was publicly described by retired Chief Justice Warren Burger as “one of the greatest pieces of fraud, I repeat the word ‘fraud,’ on the American public by special interest groups that I have ever seen in my lifetime.” That was the theory which five on the Court adopted. As one author noted, “Five Justices on the Supreme Court were able to reinterpret, by some standards radically, the Second Amendment’s right to keep and bear arms as a personal, not a collective right in *Heller*.”

At the wall separating church and state, the bloc of five chipped steadily away: Christian crosses in public parks, Federal tax credits funding religious schools, Christian prayer at legislative meetings. As constitutional scholar Erwin Chemerinsky summed it up: “Rather than obliterating the wall separating church and state all at once, the Roberts Court’s opinions are dismantling it brick by brick.”

Four decades ago, *Roe v. Wade* recognized a wall of privacy in the Constitution between the government and a woman’s private medical decisions. In this context, the court has long required State laws barring late-term abortions to have an exception to protect the health of the mother. Then the Roberts Court upheld a ban on the pro-

cedure that had no exception for the health of the mother.

As Justice Ginsburg stated in her dissent: “[T]he Act and the Court’s defense of it cannot be understood as anything other than an effort to chip away at a right declared again and again by this Court—and with increasing comprehension of its centrality to women’s lives.”

If the conservative win rate in the Court is striking, the corporate one is even more so. A recent study found the Roberts Court more favorable to business interests than its predecessors, with all five members of the recent rightwing bloc among the top 10 most business-friendly judges in the last 65 years. Chief Justice Roberts was No. 1 and Justice Alito No. 2.

Studies showed the Roberts Court following the legal position of the U.S. Chamber of Commerce, which is a de facto organ of the National Republican Party, 69 percent of the time, up from 56 percent during the Rehnquist Court and 43 percent during the Burger Court. Connect the dots. The Republicans are the party of the corporations, the judges are the appointees of the Republicans, and the judges are delivering for the corporations. It is being done in plain view.

Many Chamber victories were significant, such as making employment discrimination harder to prove, letting manufacturers and distributors fix minimum prices for retail goods, letting mutual funds advisers include misstatements made by others in the documents they prepare for investors, and even Hobby Lobby, where the Court put the religious rights of corporate entities over the rights of employees.

Big corporations hate being hauled into court and having to face juries, and the five Republican appointees protected them by raising pleading standards for victims, letting companies push disputes into corporate-favored arbitration, restricting Americans’ ability to press cases of large-scale wrongdoing in class actions, making it more difficult for workers to hold employers accountable for workplace harassment, and making it harder for consumers with serious side effects to sue the drug companies.

Now before the Court is a case the five-man bloc has pursued for some time. It was expected that the five would use it to deal a significant blow to the political and economic clout of unions, a great boon for the big corporations. It also looked like the five were teeing up for the fossil fuel industry, a big victory against the President’s Clean Power Plan.

There was a lot at stake in that fifth vote. There was a lot that was delivered because of that fifth vote. At 4 to 4, the circuit court decision below

stands. At 4 to 4, the challenged regulation ordinarily prevails.

I will close with the big sockdolager: Citizens United. It was once the opinion of the U.S. Supreme Court that “to subject the state governments to the combined capital of wealthy corporations [would] produce universal corruption.” No more. The five judges behind Citizens United opened the floodgates for unlimited anonymous corporate spending in elections. They found that corporate corruption of elections was near impossible, and they caused a tsunami of slime—to use a phrase that I borrow—that we have seen in recent election cycles. Such a brute role for big corporations in our American Government would shock the Founding Fathers who foresaw no important role in our Republic for the corporations of the time.

To unleash that corporate power in our elections, the five conservative justices had to go through some remarkable contortions. They had to reverse previous decisions where the Court had said the opposite. They had to make up facts that were then predictably and are now demonstrably wrong. They had to create a make-believe world of independence and transparency in election spending that present experience belies, and they had to maneuver their own judicial procedures to forestall a factual record belying the facts they were making up.

It was a dirty business with a lot of signs of intent, and it has produced evil results that we live with every day. All of this—Republican election advantage, corporate welfare, the conservative social agenda—is because the activists, corporatists, and rightwing bloc had a fifth vote. That bloc of five did more for the far right, for the Republican Party, and for its corporate backers than all of the Republicans in the House and Senate have been able to do. They delivered. Now it is 4 to 4 and that advantage is gone; hence the panic on the Republican side; hence the departure from plain constitutional text.

Imagine any other constitutional duty of the President that he failed to do that would not cause uproar and outrage. There would be nobody on the floor here because everybody would have run off to FOX News to get their talking headshot in and talk about what a terrible thing the President had done by violating his constitutional duty. Well, the President has a constitutional duty—he shall nominate.

They are in a political pickle, but the Constitution doesn't care about the politics. From the Constitution's point of view, the politics are just too darn bad. The Constitution directs the President to make the appointment, and he should do his job. The Constitution gives the Senate the job of advice and consent to the President's nominee. We should do our job just as the Constitution provides.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. PERDUE). Without objection, it is so ordered.

REMEMBERING WILLIAM USHER

Mr. MCCONNELL. Mr. President, I wish to commemorate the life and legacy of a distinguished Kentuckian who has sadly passed away. William “Bill” Usher of Paducah died this February 14, 2016, after a short illness. He was 86 years old.

Bill was the owner and manager for many years of Usher Transport, a family-owned and operated Kentucky business founded in the 1940s. He was well known in Paducah and western Kentucky as a community leader, and he was a friend of mine whom I saw often in my travels through Paducah.

Bill gave generously of his time and resources to many organizations, charities, and causes. He served as both president and chairman of the Greater Paducah Chamber of Commerce. He served with Greater Paducah Industrial Development, the Paducah Rotary Club, the Kentucky Motor Transport Association, and National Tank Truck Carriers.

Bill was a board member of Citizens Bank and helped found Paducah's first industrial development group. He was the chairman of the Barkley Regional Airport board of directors. He was also the chairman of the Board of Exhibit Management in Louisville.

Bill understood what it means to serve from a young age. While studying at the University of Kentucky, he was named outstanding cadet of the Air Force ROTC. Upon graduation in 1952, he served as a fighter pilot in the U.S. Air Force and Air Force Reserves for several years, retiring as a major.

While in the military, he served as an air combat and gunner instructor at Luke Air Force Base in Phoenix, AZ, and with the 417th Tactical Fighter Squadron based in France and Germany flying F-100s. He was awarded the Commendation Medal. In the 1960s, he moved back to Paducah to help build the family business.

Bill was a native of Graves County and attended the First United Methodist Church in Mayfield, KY.

He leaves behind his wife Virginia “Ginger” Sabel Usher; two sons, William A. Usher, Jr., and Alan W. Usher; a stepdaughter, Karen Elizabeth Reed Alpers; a stepson, James Boone Reed; three grandsons, Ryan Lunsford Usher, William Patrick Usher, and William A. Usher III; three stepgrandsons, David Roscoe Reed II, William Murphy Reed, and Ely E. Mazmanians; a stepgranddaughter, Avary Frazier; extended family members Gabriel Vieira, Kathleen Overlin, Sabel Overlin, Max Overlin, Elise Overlin, and Stacy Overlin; and many more beloved family members and friends.

The Paducah Sun recently published an article highlighting the impact Bill Usher had on his friends, family, and community. I ask unanimous consent that a copy of the article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Paducah Sun, Feb. 15, 2016]

BILL USHER REMEMBERED AS BENEVOLENT
PUBLIC SERVANT

(By Kaylan Thompson)

Paducah leaders and friends remember William “Bill” Usher as a driving force of leadership and benevolence throughout the area and say his impact will be felt throughout the community for years to come.

“He’s a rare breed of community leader in Paducah,” said Bill Bartleman, McCracken County commissioner and friend of Usher for nearly 40 years. “He was the old kind of leadership, the behind-the-scenes leader that we used to have, the kind of people who weren’t in the limelight. They just did what they thought was right for the community.”

Usher died early Sunday morning at Morningside Assisted Living. He was 86.

Bartleman, a former legislative reporter with The Sun, first got to know Usher while covering community and political movements in the 1970s. During that time, Usher proved a helpful source and political liaison.

“He was a major force for our community,” Bartleman said. “He did a lot to help the community and did it quietly. He had contacts with political leaders, and he worked with them to get benefits for the community. He did things that people probably didn’t know about and would have been hard to document because he worked so humbly.”

Usher’s political and civic resume includes an array of titles, including chairman of the McCracken County Democratic Party, president of the Greater Paducah Chamber of Commerce, president of the Paducah Rotary Club, and chairman of the Barkley Regional Airport Board of Directors.

“He was always supportive and always encouraged good government,” Bartleman said. “He wanted people to do the right thing. He didn’t use his influence to benefit himself, he used it solely to benefit the community through the bureaucracy of government.”

During Bartleman’s campaign for political office, he added, Usher often reached out to him.

“He said he was supportive of me as long as I would do what’s right for the community and the people,” he said. “Even in his senior years he was involved in politics and wanted things done right, not to see people elected to help himself, but to see people elected who would do good government.”

That inspiration, Bartleman said, is the torch Usher passed on to him and others, encouraging them to lead with humility.

“What I learned from him is to just do the right thing and don’t seek publicity,” Bartleman said. “In the long run you’ll be rewarded, at least in knowing you benefited the community. Your involvement in anything should be to do what’s right and not seek self-gratification.”

Usher, a Mayfield native, was a graduate of Mayfield High School and the University of Kentucky.

He came to Paducah in 1960 following eight years of service in the U.S. Air Force, then taking on the family business, Usher Transportation Co., as president.

In recent years, he strongly supported several charitable organizations and the Paducah Police Department.

While most of his work remained anonymous, his chief involvement with the department was with Christmas Cops, a program